IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1845

JAMES STRYKER and WALTER WOITOVICH,

Petitioners,

vs.

THE VILLAGE OF OAK PARK, ILLINOIS and BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF OAK PARK, ILLINOIS,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Illinois

REPLY BRIEF FOR PETITIONERS

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STATEMENT

The purpose of the petitioners' reply brief is to answer several contentions advanced by the respondents' brief in opposition which was received on July 20, 1976.

The facts of the instant matter and all opinions below have been set forth in the petition for Writ of Certiorari filed in this Court on June 21, 1976.

ARGUMENT

In filing the brief in opposition to the petitioners' Writ of Certiorari, the respondents contend that the federal constitutional question had not been raised properly in the state Court of the State of Illinois.

To support their contention to this effect, the respondents cite *Louisville and Nashville Railway Company v. Woodford*, 234 U.S. 46 (1913), *Pennsylvania R. Co. v. Illinois*, 297 U.S. 447 (1935), *Memphis Gas v. Beeler*, 315 U.S. 651 (1941), *Zehender and Factor, Inc. v. Murphy*, 386 Ill. 244 (1944).

However, the aforesaid cited cases do not apply, since the Illinois Supreme Court did in effect rule on the federal constitutional issues as raised by the plaintiffs Writ of Certiorari.

Specifically, in their brief, as filed with the Illinois Supreme Court, the petitioners raised the question of equal protection under the Bill of Rights of the State of Illinois and the United States Constitution. (App. D. pp. 837 and 838).

Additionally, in the petitioners' reply brief, as filed with the Illinois Supreme Court, the federal issue of equal protection was raised. (App. E, pp. 48-50).

In conjunction with the federal issue as raised in the petitioners' brief, the Illinois Supreme Court did consider that issue as is substantiated by the following language of its opinion:

"We consider next the contention that the ordinances failed to conform with minimum statewide standards established by the General Assembly. Plaintiffs argue that providing "the best possible police protection" is a matter of statewide concern. Although not articulated in precisely that manner we construe plaintiffs' argument to be that because division 2.1 of article 10 of the Municipal Code is a statute encompassing a matter of statewide interest, section 6(i) of article VII of the 1970 Constitution required that any concurrent action taken by defendant be consistent with its provisions, notwithstanding that the statute was enacted prior to the effective date of the Constitution. They analogize the statutory scheme contained in division 2.1 of article 10 of the Municipal Code with the Environmental Protection Act. (Ill. Rev. Stat. 1973, ch. 111½, par. 1001 *et seq.*) and argue that "guaranteeing each Illinois citizen the best possible police protection is as vital as guaranteeing that same citizen the best possible protection against pollution."

"Plaintiffs' contention that the statutory scheme either contemplated or provided for statewide uniformity is refuted by the fact that division 1 of article 10 of the Municipal Code (Civil Service in Cities, ch. 24, par. 10-1-17) permits the exemption from classified service, *inter alia*, of the chief of police and "police officers above the grade of captain." Also the qualifications for the office of civil service commissioner (ch. 24, par. 10-1-1) are not the same as those required for the office of fire and police commissioner (ch. 24, par. 10-2.1-3). Obviously the statutes did not establish a uniform plan which governed statewide the matters with which the challenged ordinances were concerned."

Likewise, Justice Ryan, in his dissent, analyzed the Oak Park amending ordinances in terms of the constitutional guarantees of the I, V, IX and XIV

Amendments of the United States Constitution as is exemplified by the following language from that dissent:

> "The contents of the amendments to the Village Code are not of serious concern. The primary issue is whether a home rule unit has the authority to alter or tamper with the basic foundation of division 2.1 of article 10. If we acknowledge that this is an area pertaining to local government and affairs then we have recognized the raw power in any home rule unit to alter or even abolish all requirements of division 2.1 of article 10. The reform of merit selection and tenure of firemen and policemen which began in 1903 and which was achieved in 1949 will have been lost to home rule municipalities. Accompanying this may well be the resurrection of patronage appointments, promotions and discharges and the attendant evils. The long-standing activity by the State to abolish such practices and the dominant interest finally achieved by the State in 1949 precludes this matter from being considered as pertaining to local government and affairs. I would hold that the amendments to the ordinances of the Village of Oak Park are void."

At the same time, the respondents' brief states that, recently in *Bishop v. Wood*, 74-1304, 44 L. W. 4820, this Court held that a policeman had no property interest in employment guaranteed by the XIV Amendment which would entitle such an officer to a hearing before discharge.

That, because of the *Bishop* case, the petitioners do not have any property interest right in their employment by which they have a standing via the Writ of Certiorari filed herein.

However, the respondents' brief did not correctly analyze *Bishop v. Wood*, since this Court was quite specific that the *Bishop* dismissal without a hearing was based upon the fact that a North Carolina statute did

not provide for a hearing prior to dismissal which is contrary to the Fire and Police Commissioners Act of the State of Illinois which provides for such hearing.

Consequently, the *Bishop v. Wood* opinion would not apply in this instance; in fact, this Court, in the *Bishop* opinion, stated that a property interest does exist in connection with the XIV Amendment if a state statute provides for a hearing prior to dismissal.

In addition, the petitioners dispute the contention of the respondents that the amending ordinances of the Village of Oak Park do not effect them adversely, since they have not been deprived of their position in the police department nor removed from Civil Service as the ordinance in question merely provides for the promotions to Deputy Chiefs.

The amending ordinances of the Village of Oak Park have eroded the Fire and Police Commissioners Act in that they have created a new rank of Deputy Chief for the purpose of avoiding Civil Service examinations based on competency for such promotions with the result that patronage can become the primary consideration for the advancement to Deputy Chief, and have provided a procedure for dismissals without hearings of Police Chiefs and Deputy Chiefs, thereby circumventing the property interest of a hearing prior to dismissal as heretofore provided by the Fire and Police Commissioners Act of the State of Illinois.

It is not merely the question of the Village Manager hiring and firing chiefs and Deputy Chiefs without the involvement of Civil Service examinations and discharge hearings for cause, but it is a question of an erosion of the Fire and Police Commissioners Act of the State of Illinois by these amending Oak Park ordinances which

will lay the foundation for the eventual elimination of Civil Service examinations and hearings relating to discharges for all police ranks currently governed by the Fire and Police Commissioners Act.

The net result of the Oak Park amending ordinance is to destroy the property interest of policemen in the hiring, promoting and discharging practices as provided by the existing Fire and Police Commissioners Act of the State of Illinois which property interest enables them to invoke the XIV Amendment of the United States Constitution as reflected in the *Bishop v. Wood* opinion.

CONCLUSION

For these reasons a Writ of Certiorari should issue to review the judgment of the Supreme Court of Illinois.

Respectfully submitted,

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